

FINAL
Signed:

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on March 15, 1999 at 3:10 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bollinger (R)
Sen. Chris Christian (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 266, HB 430, 3/4/1999
Executive Action: HB 430, HB 399, HB 580

HEARING ON HB 266

Sponsor: REP. MARY ANNE GUGGENHEIM, HD 55, Helena

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nicer. These foods are more expensive. They are specially produced and they have run into the situation, even when people have a rider on their insurance, that says "PKU is covered," they fight for months and years to get them to cover these foods. The first piece of this proposed change is to clarify, that in addition to covering the standard formula, which it took a while to get companies to do that, but now they do, that it also includes, foods. And that is identified on the top of Page 4, Line 5, "medical foods", and then medical foods as specifically defined as food.

The second change she proposes is while they are amending this section of Code to put into the statute, "that for a handful of other rare diseases, even more rare than PKU, they have a couple in the state right now, about 20 patients in the state, under treatment for PKU, but some very rare conditions that involve complicated biochemistry, and she is not going to spell those words at the Committee today. If they pop up, they occur in incidences of 1 in 15, to 1 in 50,000, live births, so you are not going to see it very often. When comparable ways of medical treatment, involving special alterations in PKU are essential, absolutely crucial part of the treatment, that those conditions would also be covered. In the language that does, is to indicate on Page 3, Lines 26 and 27, the term is "inborn errors of metabolism. She said she would give them a little window of just what PKU and analogous diseases are and why they need this very special nutritional treatment.

Our bodies do a very remarkable thing. We give it food, either in the form of carbohydrate, or protein, and from that food, the carburetor and engine of our body, produces our substance, protein, fat and carbohydrate, but it's in the form of brains, kidneys, and muscles. And it is also constantly replenishing that, like your skin and nails turn over, the rest of your body does too. So that our body takes food, and gives us our building blocks and it also produces energy, so we can move our body, and make use of it. The way this is done is by, literally thousands, helper proteins that are called enzymes. Each of those enzymes are controlled by a single gene. They are doing full circle here in terms of genetics. These are single gene disorders, not the complex things like diabetes, and cancer, which are multiple genetic factors. This is a lessor kind of a thing. The trick is to give them insight into the PKU. Why you can't just treat this yourself by going to the grocery store, and why don't they buy certain bread, etc. PKU itself is a disorder that lies within protein metabolism, and proteins are made up of 26 different kinds of building blocks come together in a variety of ways. They are called amino acids. It turns out that there are 9 amino acids that the body has to take in. It can't make the other amino acids. There are some it can't make. Therefore, you have

to eat in order for the body to have the fuel that it needs to accomplish the 2 things that she mentioned earlier. Phenylketonuria, amino acid is one of those essential ones. So that means that you cannot live if you don't take phenylketonuria into your body, because you need it for this process.

In this rare disease about 1 in 10,000 live births, the PKU, the defect one of the systems in phenylketonuria metabolism that has to with passing it on to the next step. The consequence of the deficiency is that single enzyme, in people who have what they call PKU as a disease. The amount of phenylketonuria gets blocked, because it can't move to the next level in the system that the body has set up. When your phenylketonuria level gets above the normal amount, most of us have around 2 to 3 milligrams parts per million, anyway a certain amount. When the level goes up, which happens when you can't move it along a conveyor belt, it causes severe brain damage. If they don't pick this disease up early, and put babies on this special formula early, you end up with residents of Boulder, MT, rather than normally looking high school seniors. It is a marvelous thing. It is one of the really success stories of medicine of the last 40 or 50 years.

The trick, you see, is that you just can't take in "no protein", because you need phenylketonuria, it's essential. The body can't make it any other way. The formulas, and the foods, are designed to give enough to grow on and to make the system work, but not too much, so it doesn't cause brain damage. In essence that is how they treat it. As a physician, she is involved in the diagnosis, writing prescriptions for the formulas, and dealing with this and that. However, the crucial person in the patient's life is a knowledgeable dietitian. This is the kind of diseases, these inborn errors of metabolism, they are dealing with. Picked up early, treated appropriately, no problem. If that doesn't happen, and there is evidence that taking tasting formula all of your life, well you can imagine when you are 14 years old, how that would appeal to you. There are actually studies showing that when people with this disease only have the formula, they are not as compliant. They cheat. Who wouldn't.

Now and then you just have to go with a hamburger, especially if you can't have spaghetti or crackers, or bread or anything like that, which you can't have except for the food products. This is the best medicine. It's a bit more expensive, the foods you cannot do it yourself. You cannot buy these. They do it all in Montana, through a pharmacist. **EXHIBIT (phs58a01)**

They have a letter in their packet from a pharmacist in Great Falls, who actually testified at the House hearing, but he is unable to make it here today. Most of the prescriptions wrote

through him, he gets from the various companies that provide it. It is all calculated, and complicated, but it works.

Proponents' Testimony:

Joni Heydon, Joplin, MT, said in 1984, when she was born, she was diagnosed with PKU. She has been on a diet for over 18 years. She has had nutritionists in the past, they figure out the amount of protein, low proteins foods that she can have. In the early years, the diet was easier to maintain than now, because her parents did it all from the beginning. Now she is starting to handle it by herself. In 1989, she was in the Senate hearing, she was at the Senate hearing for the previous bill. The bill helped, but did not solve all the needs. She has been to Portland and Denver Medical Centers. From 1995 to 1996, she was in a research study, where she got to try other low protein foods that she can have. She comes to Helena, 2 times a year, to link back up with the medical team. She is asking the Committee to support these changes to the law, for herself and all the PKU'S.

Dean Heydon, Joni Haydon's father, Private Citizen, said they knew nothing about PKU when Joni was born. They learned it all basically through the nutritionist. They fought with the insurance companies. They were at the 1989 Legislative Session Senate hearing. It did pass there. There has been a lot of progress with the different foods. They believe these changes to the bill will help. They ask for the Committee's support on **HB 266**.

Mary Musil, M.S., R.D., Helena, Representing herself, Nutritionist for the Montana Metabolic Team organized by the Montana Department of PHHS, read her testimony.

EXHIBIT (phs58a02)

Claudia Clifford, Insurance Specialist, State Auditor's Office, said **Mark O'Keefe, State Auditor, Commissioner of Insurance**, stand

in support of the update of this mandated benefit. It makes a lot of sense to treat people like **Joni Heydon** properly. She didn't think this reflects a great increase in cost. These are very, very rare diseases and this bill makes a lot of sense.

Todd Thun, Representing the Montana Nurse's Association. For the record, the Association stands in support of this bill.

Beda Lovitt, Montana Medical Association, said she will just echo, and say they are in strong support of this bill.

Opponents' Testimony: None

Informational Testimony:

Michael Spence, Medical Doctor, and State Medical Officer for DPHHS, Health Policy & Services Division, said inborn errors of metabolism, although they are relative uncommon, are very serious diseases. They are inherited from ones parents through genes as was explained by **Doctor Guggenheim**. They are not preventable. They are not acquired. They are acquired only through birth. They occur very infrequently. The frequency of phenylketonuria for example is about 1 in every 10,000, to 1 in every 20,000 live births. In the State of Montana, there is between 10,000 and 11,000 live births every year, so they see one or two children born with this particular condition. Other inborn errors of metabolism, which were mentioned include such things as galactosemia, which occurs with the frequency of 1 in every 50,000 live births, maple syrup urine disease, 1 in every 200,000 live births, and homoceptinuria, 1 in every 200,000 to 300,000 live births. They might see one of these every 20 to 30 years in the State of Montana. These conditions are uncommon. They are not preventable. What is critically important is that they are diagnosed early. They have a mandate, where all children that are newborn in the State of Montana, have a blood test at the birth, looking for these conditions. Once they are diagnosed, it is of utmost importance to not only diagnose them, but to initiate therapy. Initialing therapy of the essence to get a positive result in children that are born with these particular conditions. As was pointed out by **Doctor Guggenheim**, the condition has to be treated by using very special formulated diets. Phenylketonuria which represents the most common of these conditions is nutritional deficiency of an enzyme that causes accumulation of this particular amino acid. They know for example that phenylketonuria occurs in every source of protein. It occurs in poultry, red meat, it occurs in butter, cheese and cereals, as was pointed out by **Ms. Musil**. So they know that it is every where and sticks with us in our diets. You cannot get around it. So people with this particular condition are forced to eat foods that have a deficiently in this, or a structured amount of it. They have to look at this as not necessarily just a food, because all us have to have food, to sustain ourselves, but this is much like insulin that is required by the diabetic, or like medication that is required by the person with heart disease, or high blood pressure. This is a medical requirement that is why they write formulas and prescriptions for these patients. It is thought that when one considers what is available, in looking at this, they know that this condition: (1) is acquired, it is not preventable, it requires early diagnosis, and it mandates effective treatment.

Questions from Committee Members and Responses:

SEN. HARGROVE said to **REP. GUGGENHEIM**, that he noticed she had gone to some trouble in the bill to replace the PKU, phenylketonuria with a generic term. Are there other things that fall under that inborn errors of metabolism.

REP. GUGGENHEIM answered, yes there are. **Doctor Spence** ran over a few of the numbers and rare conditions. Those are inborn errors of metabolism. Inborn errors of metabolism is a long established medical term. You can find chapters and sections that are headed with that term. It describes these rare diseases where there is a glitch in one particular enzyme that makes one particular thing go out of kilter.

SEN. HARGROVE said, he supposed it was obvious, but there is no definition for ordinary foods. He guessed that it was anything that wasn't necessary as a medical food.

REP. GUGGENHEIM answered, what they implied by that is going to the grocery store, or any other place that sells food or drink, and items you could buy, just by paying for it. As opposed to a food that is specifically synthesized to be low, or it could be a situation excessively high in some thing, and specifically formulated. These are low in protein. You can't buy them in the grocery store.

SEN. HARGROVE commented, the first of January the year 2000, is there any particular reason for that, for when the bill is in effect.

REP. GUGGENHEIM, said she didn't think she could answer that.

SEN. HARGROVE redirected his question to **Claudia Clifford**.

Claudia Clifford said, a number of the insurance companies have asked that when they change certain kinds of insurance statutes, they do it at the first of the year. The first of the year is when they have the most renewals. They try to bring it into compliance, and have standardization.

SEN. FRANKLIN said, technically you probably wouldn't consider this, but is there any way that juvenile diabetes could be construed as an inborn error of metabolism. There could be arguments over whether or not special low sugar products would be covered, to save us any problems later. She sees that later in the bill, it says, "inborn errors of metabolism that involve amino acid, carbohydrate, and fat metabolism. Juvenile diabetics would basically be problems with glucose. Do you want a control for that in this bill?

REP. GUGGENHEIM answered, she didn't think so. If they look at the top of Page 4, Line 7 (ii), says, "specifically processed or formulated to be distinct". They used the word to be "distinct," rather than deficient, she forgets what the disease was, but there was one where there would have a higher than usual amount. She didn't think that just by using an artificial sweetener, or not eating sugary foods, that it would go in. Certainly diabetes is not an inborn error of metabolism analogous to these other conditions, except that it is hormonal deficiency.

SEN. CHRISTIAENS asked **Claudia Clifford**, he sees that this is going to mandate coverage by **MEWAs** (Multiple Employer Welfare Arrangements), how are you able to do that.

Claudia Clifford, answered the law does currently have certain statutes that regulate **MEWAs**, and it exempts those **MEWAs** from other parts of our statutes. They have some regularity authority, which is sort of in flux, depending on certain court decisions. They have some regulatory authority over certain MEWA arrangements. She is guessing that when this bill was drafted, it was drafted to try affect as many kinds of plans as possible.

SEN. CHRISTIAN stated, left out are all those under ERISA (Employee Retirement Income Security Act), and the self insured plans. What about HMO's as well.

Claudia Clifford asked **SEN. CHRISTIAN**, if he was asking whether this bill affects HMO's.

SEN. CHRISTIAN stated, right.

Claudia Clifford, answered, she would have to check the HMO statute. She believes it does already affect HMO's, because the way the HMO statute is set up, it lists the number of the various benefits that must comply. So if you change the main provisions of a mandated benefit, and its referenced in HMO statute, then this bill would effect the provision in the HMO statutes. It is her guess, that if she wasn't sent over with a note to make sure it happened, then their legal department has said, " that it will affect HMO's."

SEN. CHRISTIAN said the question that he has is, they must have other types of things that some how physicians must be able to write it as a diagnoses that is covered by insurance. How would they be handling this now. Couldn't they do something that would require a diet, a special diet, that would require some insurance coverage, such as the juvenile diabetes that **SEN. FRANKLIN** talked about. Or are they just automatically covered.

Claudia Clifford stated this is very specific to the inborn errors of metabolism. Otherwise speciality foods developed for diabetics are never covered by insurance companies. They are going to have to work with the physicians and specialists that understand this, and even have their policy holders services division and enforces a lot of these laws that have a specific list of what are the names of the conditions that they need to look out for.

Closing by Sponsor:

REP. GUGGENHEIM thanked the Committee for a good hearing. These are rare diseases, and it behooves us to treat them in an optimal way, instead of having to take care of **Joni Haydon** all of her life, she is going to start paying taxes pretty soon. So lets do it right.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 30}

HEARING ON HB 430

Sponsor: **REP. CAROLYN SQUIRES, HB 68, Missoula**

Proponents: **Brandon Tippy, Representing 500 + Members of Local #3038, Union in Missoula, Members of Stimpson Lumber Company, Circle Manufacturing and Clausen Manufacturing Co.**
 Larry Keogh, Member of Carpenters' Local #3038, Stimpson Plant, Bonner, MT
 Don, Judge, Representing State AFL-CIO
 Gene Fenderson, Representing Montana Highway Com., Construction Group Which Includes, Dams, Refineries, Highways and Causeways, etc.
 Todd Thun, Montana Nurse's Association
 Nancy Butler, State Fund
 Al Smith, Attorney, Montana Trial Lawyers'
 George Wood, Montana Self Insurers' Association

Opponents: **None**

Opening Statement by Sponsor:

REP. CAROLYN SQUIRES, HD 68, Missoula, said today, she is presenting **HB 430. House Bill 430** is a bill that was brought to

her attention by some of the people that she interacts with in Missoula. This bill deals with preferred providers, and health maintenance organizations. This an act to clarify when a worker may choose his or her initial treating physician, even if a preferred provider organization is in place. The bill also provides for written notice to the injured worker after the date of injury. There has been some problems in an establishment, and she is just trying to clarify the law. The proponents will give the Committee find examples as to what the problems have been, and they will see the rationale for this bill.

Proponents' Testimony:

Brandon Tippy, Representing 500 plus Members of Local 3038, Union in Missoula, Members of Stimpson Lumber Company, Circle Manufacturing and Clausen Manufacturing, said he has been talking to several legislators in the last 1 1/2 years, they found problems with PPO (Preferred Provider Organization) statutes which were adopted. The original intent was that the Workers' Compensation Insurance Agencies, would have a check against workers' malingering on the Worker's Compensation system.

Specifically, if the patient was taking too long to heal, or the insurer felt that the patient may be faking the injury, the insurer could then refer the patient to preferred provider organization, and gain further insight and control in the individual's case. The organization providers were going to protect the Worker's Compensation System from abuse, and rightly so. None of them disagree with that at all. However, those who have experienced the application of the appeal system have found that instead of using the appeal system for Worker's Compensation fraud protection, the appeals have been used for primary care.

Now what happens when a PPO, is used for primary care instead of what it was intended for - is the patients are not given the opportunity to choose their treating physician. As the language is written in the Code, a patient has the right to choose his/her initial treating physician. However, if the insurance company informs that individual, they are under a PPO System, then that patient must receive care from a PPO provider. In order to shunt these patients into their system immediately, they have devised a system of posting the providers, and noticing that the PPO system at the place of employment. Regardless of whether or not the patient's been malingering in the system, they are forced into the care of what they like to call "company doctors." Company doctors are those with a certain philosophy that fits the insurance companies criteria.

As an illustration, a worker's injured, the supervisor takes the employee to the emergency room, or the employee goes to a provider alone. At that point, the supervisor informs the worker patient, that they are now required to receive any further care from one of the appeal providers. In some cases, they don't even make it to the emergency room, or the initial one time visit, they don't even make it to that either. Sometimes they go to their supervisor, and say, "I'm injured, I'm hurt, I'm going to go to the doctor, and that supervisor immediately says, well you understand that you are under an appeal system, you need to pick one of these (in their case - about 4 doctors) general practitioners. Once in the appeal system, they can't leave unless, referred by the provider and in that instance, the insurance company requests, that the appeal provider remains as the treating physician. So that ultimate control of the care stays with the insurance company and the employer.

What results, is that the employer and the insurer are in direct contact with the provider, and usually know the intimate details of care, either at the same time, or in many instances even before the patient. In many cases, the employer informs the patient when he or she can return to work and in what capacity. This obviously sacrifices any privacy of care. The patient also suffers from the lack of quality and speed of care. The insured designs the appeal system, is relative small for business purposes. They want providers who have the philosophy the insurer wants in their organization. This is generally to turn these employees back into work as soon as they can, and will keep cost down, lost time incidents, and everything that the company can benefit from. The selection of providers for patients is extremely small. It is a pretty mathematical formula. In order to generate, greater volume, you need to make sure you have fewer providers.

In Missoula, they have roughly 4 choices, in their appeal system. Their sister local in Libby, they only have one choice. All of these providers are general practitioners. Before a patient can go to specialist, they must go to a PPO or job practitioner first and receive a referral. This takes time, and in many cases time is of the essence, depending on the injury.

In conclusion, he would like to say, the Appeal Worker's Compensation language has not been applied as it was originally intended, is sacrificing the rights to timely, and quality, and private care for fellow Montanans, and should be amended to correct the situation. He is in support of **HB 430**.

Larry Keogh, Member of Carpenters Local 3038, Stimpson Plant, in Bonner, MT. He is a worker that was inadvertently injured. In March 1997, his ring finger on his right hand was trapped between

a board, and belt. His finger being trapped between the board and belt, as the board was coming by, he managed to pull his hand out, but it wound up taking the end knuckle and breaking his finger off, the skin was still holding it on. The bone had erupted. Going to the emergency room with his supervisor that evening, at about 1:30 a.m.. They went in and ER doctor tried to set, deaden it, tried to set it and the ER doctor informed him at time that he was going to need to see an orthopedic surgeon. The ER doctor asked him if he had a preference. He didn't, but his wife works within the medical community in Missoula. In Western Montana there is a renowned hand doctor right there. He got home from work at about 5:00 a.m. He told his wife, and she pulled some strings, and managed to wrangle an appointment for 10:30 a.m. with the specialist orthopedic surgeon.

He called his employer, since he had an appointment at 10:30 a.m. and told them what he was going to do. The superintendent of the lumber division, said "No, no, you have got to go to one of our preferred providers, we are a PPO organization."

So he called this general practitioner, and arranged for a 1:00 p.m. in afternoon appointment. That is only a 2 1/2 hour time difference. He went in to talk to the general practitioner, with this huge gauze thing on his hand, and the doctor took one look at it and "what are you doing here." He said he didn't know what they could do, have you had a tetanus shot. Well he hadn't so he went ahead and took a tetanus shot. He tried to get an appointment later on that day with same orthopedic surgeon, well he didn't have another opening until the next week.

Remember he works in a lumber mill, with belts and other equipment, they do get dirty. By next week when he went in to see the orthopedic surgeon, an infection had set in. So he went on a high powered antibiotic, knock em dead medication. He went through a 10 course of the medication, and they also arranged for surgery date at the end of the bout of antibiotics. He is now down in the surgery pre-room, never had gone under the knife before, knees were shaking, and the doctor opens it up and says, "is that pus, I see, yes, well we're not going to operate on this." So the doctor put him on another 7 day course of antibiotics. He came back 7 days later, now he is dealing with 3 weeks after the injury. The infection set in, it went deeper. Finally 3 weeks later, he is able go to work. So at the end of March, first of April, he finally gets in to have his finger operated on. At which time, they had to go in and re-break it because it had already started knitting. They re-broke it, pinned it, put it back together, and sent him home. The delay in surgery, along with the infection that set in, and not being able to take advantage of the strings pulled by his wife, cost him not to be able to go back to work, until the first part of August.

This happened the 1st part of March to the 1st part of August, which is five or six months that he was off and collecting Workers' Compensation.

So this was a pretty big expense for Worker's Compensation part and he understands they were trying to save money through the PPO.

This is much the same as a stone being cast into a pond where you have a ripple effect in Montana. One of the effects of being a Montanan is, it is not uncommon for us, or laborers at any rate to have to work at 2 or 3 different jobs. One of his other jobs is in the United States Army Reserve. In the Army Reserve one of the ways to become promoted, and moved up, is to go to leadership schools. The leadership school that he was scheduled to go to on the 18th of March 1997, required them to go through and pass a physical fitness test, which included doing push ups. They are not allowed to go to the Leadership Schools, if you can't pass the physical fitness test. He couldn't do push ups. For medical reasons, they wouldn't allow him to do push ups. So he had to forego that school. Now this was only a promotion from E6 to E7, but the monthly income and it is only about a \$15.00 difference every half day, so it is only about a \$60.00 a week difference.

He is getting very very close to retirement now in 1999. In December of 1999, he is eligible to retire. Unless things change, he is going to be retiring as an E6, the retirement difference, from now until the time he dies, between an E6, and an E7, is substantial during the course of any given month. Not only was he laid up at home, not able to make an income, falling further, and further behind on their mortgage payments, and monthly bills. You are still making as much as you can. He is not drawing as much from the military because he can't go to training, and he can't go to the leadership school. Further restrictions, he had to hire a kid to come in and mow the lawn. It wound up being a hell of an impact, solely because their company's interpretation of preferred provider organization was limited in scope. He endorses the amendment to prevent abuses of the act that have gone on.

Don Judge, Representing the Montana State AFL-CIO said they rise in support of **HB 430**. Some of them were here when a third provider, first choice of physician was first adopted into law. Everybody made it clear, and argued on the Floor of the House, and in the Senate, that if a worker was injured, the first choice of a treating physician is the employees'. It belongs to that injured worker. Well the quirk in the statute seems to say that it belongs to the worker unless they have been notified that they are to go to a third provider, or a managed care organization.

Now that was not the discussion, nor was it the intent of the legislation when it was passed. All this bill does is simply clarify, that when a worker is injured, they may end up going to an emergency room for the first initial treatment, with a broken leg or whatever it might be, or the injury that was just described by **Larry Keogh**. But the next choice of doctor is there's. You can go to your regular doctor for continued pain, or in his case to the physician that was going to do the surgery and get it all done. That is the way the law was written. That was the intent of the law. Unfortunately, there are some employers in the State, who are not following that intent. This legislation, simply clarifies that. He knows that **REP. SQUIRES** has amendments, so they don't need to call him up to the podium to ask him if they support the amendments, because they do. They think the amendments clarify the bill. It's a good bill. Its not going to cost anybody anything. It just gets back to doing what was intended.

Gene Fenderson, Representing Montana Highway Committee and group of Construction, which includes dams, refineries, highways, and causeways and such, said, their members work for many employers during the year. It is not unusual for their members to end up working for 15 - 20 different employers each year. Quite frankly it is really confusing out there in the field, who and where, and what coverage they have with that particular employer. Whether the superintendent of the job knows who the provider is. This bill is important to give them their freedom, and understanding that they can go to their own physician in their home town, if need be, when they are injured, or they are out on the road, they can go back home. He asks the Committee for their support of this bill.

Todd Thun, Representing the Montana Nurses' Association said, that he was surprised to learn that some companies are making employees go to preferred providers for an injury. He knows nurses at St. Patrick's Hospital when injured in the course of their duties aren't expected to go to a preferred provider following the injury. He urges their support of this bill.

Nancy Butler, Representing the State Fund said, the State Fund has always supported the right to choose the initial treating physician. They also support this legislation which clarifies that intent. They also have concerns about the amendment that is proposed by **REP. SQUIRES**.

Al Smith, Representing Montana Trial Lawyers said they stand in support of **HB 430**. It is not very often that these folks come to them, when they do have a problem with the medical benefits. They think it is a good clarification of the law. There

shouldn't be any objection to that and they have no problems with the amendments.

George Wood, Executive Secretary of the Montana Self-Insurers' Association, a group of Montana Employers, said they support this bill. The intent was clear, however, they have been informed by the people from Bonner, that there is a problem at that location. They think the prior interpretation is wrong and needs further clarification. They support strongly the amendments that **REP. SQUIRES** presented, so they support the bill and the amendments.

Opponents' Testimony: None

SEN. BARTLETT asked, where are the amendments.

(The amendments were passed out)

Susan Fox, Legislative Researcher, told the Committee that she just processed the amendment.

REP. SQUIRES said, that when they presented **HB 430** over in the House, they wanted more clarification. There are no substantial changes in the original bill. The **State Fund** and **Mr. Wood** will agree that this is just basic language clarification. The amendment makes it simpler to read, and simpler to understand, as to what they are asking the insurance companies to do. There is no substantial changes, none of the above.

CHAIRMAN BISHOP asked, if the Committee members were comfortable with the amendment.

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. CAROLYN SQUIRES said, she would strongly encourage them to help her with this issue to put some teeth into the law, and to make sure that these folks and other workers out there, whether they be in an industrial plant, or in an office, or any other place, are well aware and informed of who they can choose when they are initially injured. Emergency room doctors don't count. The doctor that you initially see is the first one. You may go to your family physician and if the company and the preferred provider so choose, they can then request that you move into their PPO. But they get that one initial chance to pick your personal doctor, and then by notification, you will be moved into the PPO. Then you must go, or benefits don't continue. She

thinks that is only fair. This just clarifies, the method that the injured worker will be notified of that particular right that they have. They think this will help their folks, not only in the timber industry, but any other place that may have a preferred provider. She would encourage them to please pass her bill. **SEN. COCCHIARELLA** would be more than willing to carry this bill.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 25}

EXECUTIVE ACTION ON HB 266

Susan Fox, Legislative Researcher, explained that while the Committee was working on the second bill, she looked at the statutes regarding **HB 266**, and asked **Claudia Clifford** to review it quickly to make sure that it was covered. It does appear there is a problem, and they are not sure that the HMO's are covered. Is that something the Committee wants her to double check on, and work on. She didn't know if they checked on self-insured, but there is a problem with HMO's. Executive Action on **HB 266** was postponed until **Susan Fox** could clarify for the Committee.

EXECUTIVE ACTION ON HB 430

CHAIRMAN BISHOP asked if everyone understood the **Amendments** **#HB043001.asf.** **EXHIBIT** (ph
s58a03)

Motion/Vote: **SEN. FRANKLIN** moved that **HB 430 BE AMENDED -**
#HB043001.asf. Motion carried unanimously -8-0.

Motion/Vote: **SEN. FRANKLIN** moved that **HB 430 BE CONCURRED IN AS**
AMENDED. Motion carried unanimously -8-0.

EXECUTIVE ACTION ON HB 399

SEN. HARGROVE said at the last meeting, there was some interest in talking to **Mr. Kip Smith**. He wondered if they wanted to make **Mr. Smith** available to the Committee, either today, or Wednesday, March 17, 1999. He does look available.

Motion: **SEN. BARTLETT** moved that **HB 399 BE CONCURRED IN.**

Discussion:

SEN. BARTLETT said she spent a little bit of time talking with **REP. GUGGENHEIM** this weekend. While she is not going to say that she has the bill well and thoroughly understood in all its purveyance. The one point that **REP. GUGGENHEIM** made that stuck with her is there is room in the bill for Board of Medical Examiners to use their discretion about who fits into which category. Basically, she and the proponents of this bill think it would be absolutely unworkable to try and spell out in absolute black and white every single kind of case that should be excluded or every single instance that should be included. They couldn't figure out how to even try to do that without cutting off one end of the set up or another. It seems to her reasonable that the Board of Medical Examiners would be an appropriate place for that kind of discretion to vest rather than in the legislature because clearly they understand the arrangements within the medical field a lot better than most of the Committee is likely to understand.

Motion: **SEN. BARTLETT** moved that **HB 399 BE CONCURRED IN AS AMENDED.**

SEN. CHRISTIAENS said, he doesn't support passage of this bill. The reason he doesn't is, first of all the definition of telemedicine is not very clear. He had a draft regarding this same thing. He pulled his bill and he is very sorry that he did, because there is model legislation. This bill does not go to model legislation at all. Definitions are not consistent with model legislation is. He sees a lot of problems in the bill that he doesn't think even fit into what this bill is attempting to do. To him, what the whole telemedicine issue is about is interactive telecommunication, and that isn't even addressed. What he sees this bill doing, is covering physicians from another state, who are dealing with a practicing in the State of Montana. And frankly, if that is what this bill is attempting to do, it needs a lot of work with amendments to make it something that should go into legislation. He just doesn't see that happening without it going into a **Subcommittee**, and having this worked on. Therefore, he doesn't support it.

SEN. HARGROVE said he would re-voice the same thing he stated the last time, being very much a layman, this seems to him to be one of those things that they are on the verge of doing. That by not doing anything, if there is not mischief in it, but a learning process would be worth the effort to do it and start opening the door. Maybe get in a few arguments with each other and just press on. Once again, he doesn't know, but during the hearing, and they have the letter here from **Kip Smith**, there seemed to be a lot of faith by a lot of people that he knew a lot about this, and maybe it would be alright since he wasn't here to have him speak to the Committee just a little bit. He could address **SEN. CHRISTIAENS** concerns. They might ask **SEN. CHRISTIAENS** if that would be alright with him.

SEN. CHRISTIAENS said that would be fine with him.

SEN. BERRY said, his only concern is that **SEN. BARTLETT** doesn't have a whole handle and understanding, and that tells him they are scared. He wondered if they should take a day. He doesn't want to table it, could they just withdraw the motion.

SEN. DEPRATU said he is not going to be able to support the bill. He has concerns about the facilities, labs, etc. He really doesn't feel he can support the bill.

Substitute Motion: **SEN. DEPRATU** made a substitute motion that **HB 399 BE TABLED.**

Vote: Chairman Bishop asked the Senators to raising their hands, **SENATORS, CHRISTIAENS, DePRATU, FRANKLIN, BISHOP, voted "yes" and SENATORS, BERRY, BARTLETT, BOHLINGER, ECK, AND HARGROVE** voted "no". The motion to Table HB 399, **failed** 4-5.

Discussion:

SEN. FRANKLIN said she wanted to speak to the motion. She is really on the fence about the bill also. You get that gut feeling, "there's something off base." As a piece of legislative work, its like we are kind of trying to get to what the issue is, but we are not sure. She is trying to sort this out. There are larger telemedicine issues that aren't addressed in this bill.

Her argument is, does that matter or not. Does every piece of legislation have to address every issue. She doesn't think this is model legislation for telemedicine. What they need to do, if they do pass this, they need to be really clear that is true. That this the best thing, this tiny little sort of piece of some of it. When the Board of Medical Examiners, and MMA and all

these folks come in and say this is a good thing, well it's their bailiwick, she sort of has a "live and let live" approach about that. Like if they are going down the wrong path and as long as it is not causing great harm, he will let them go and they can go and fix it later. If there is something messy about it, and at the same time it is not really somehow dealing with what she understands to be the heart of telemedicine, she doesn't want this to become a precedent for what the definition of telemedicine in the statute. She thinks they can pass it, and it probably wouldn't do any great harm, unless they say that this is the "be all end all" legislation for the State. So that is why. To add to it, she really doesn't have a handle on it. It is live and let live, versus maybe some kind of a germ of a thing they have to address here.

SEN. CHRISTIAENS said this bill doesn't even feel right. He believes right now, there are boards who can govern everything that bill as its printed, is trying to address. The definitions are wrong. The only way he sees this bill going out, with any of his approval on it, is with a lot of work. He doesn't think the Committee wants to spend that kind of time.

CHAIRMAN BISHOP responded, they are not going to do that.

SEN. CHRISTIAENS said, then nothing has changed his mind

SEN. BERRY said his concern he sees in this whole thing that he has some deep fears that this is going rampant. It seems to him that this is a great opportunity for the Board of Medical Examiners to look at this and they can put this whole thing off, and think in 2 years they will draft some model legislation that will fit, but if this thing isn't causing any negative side, he thinks it at least opens the door to create the opportunity to sort this thing out and in 2 years, to upgrade this to the perfect legislation. But if they wait, maybe somebody comes up with the perfect bill in 2 years. If this bill doesn't do the wrong things, he thinks it is an opportunity to open the door and they will strengthen it up down the road.

SEN. FRANKLIN said, okay. He swayed her. For the record, she would like to ask the Board, she'd like her concern to be reflected in the record, that they don't end up considering this model legislation that becomes the structure for all of telemedicine discussions. That it really be considered the beginning of a discussion, even on the part of the Medical Examiners Board, and that they would hope they would return with some greater clarification. In their rule making they are probably find out that there is a lot of lack of clarity in the statute as it.

CHAIRMAN BISHOP asked the Committee, as many **SENATORS** in favor of HB 399 **BE CONCURRED IN AS AMENDED**, hold up their right hand, -- for the record **SENATORS, BERRY, BISHOP, BARTLETT, FRANKLIN, BOHLINGER, HARGROVE, AND ECK VOTED "YES"**, with same sign for opposed, **SENATORS DePRATU and CHRISTIAENS VOTED "no"**

Vote: The motion carried that HB 399 **BE CONCURRED IN AS AMENDED, 7-2.**

EXECUTIVE ACTION ON HB 580

Motion: **SEN. BARTLETT** moved that **AMENDMENT #HB058001.asf**, to HB 580 **BE CONCURRED IN.**

EXHIBIT (phs58a04)

Discussion:

SEN. BARTLETT asked **Susan Fox** if she heard anything back from **Steve Meloy**. **SEN. BARTLETT** said that **Steve Meloy, Administrator for the Professional and Occupational Licensing Division, Department of Commerce**, indicated that the Department of Commerce would pick up the administrative costs for these review panels. When you reading the bill on Page 3, Line 4, it says that any administrative costs may be recovered through a memorandum of understanding with the detention centers. She asked **Steve Meloy** what costs he was anticipating would be charged out to the detention centers, if any. His response was, travel type costs. She asked if it would be acceptable to him, if they struck administrative costs, and the wording that he had used, when she asked him what kind of costs, they might ask the county detention center to cover, or the certifying board. These are for the costs of the review panels. They anticipate doing almost all of this by conference call and there probably wouldn't be any cost. If they don't make a change in the way the bill reads right now, and there is a change in personnel, then the Department may end up starting to charge out the administrative costs, and in fact had planned on absorbing those within the Professional and Occupational Licensing Division, which is why the amendment is before the Committee.

SEN. FRANKLIN asked, what was the primary sponsor's response to this amendment, was she comfortable with it?

SEN. BARTLETT answered, that **REP. SCHMIDT** thought it was a good amendment.

SEN. FRANKLIN asked about item #2, the violation.

SEN. BARTLETT responded that was a technical amendment that they threw in.

Susan Fox answered, in fact if there is a violation, you would want that forwarded, but if the complaint is not founded then you wouldn't forward the complaint.

SEN. FRANKLIN said she thought it reasonable that the record should reflect their commitment was to do it as low cost. But even though the term is used, administrator of review, they didn't necessarily envision, that there would have to be a meeting, and people had to travel to Helena. That it could be done by reviewing materials, responding, via the telephone, or some other electronic mode. She thinks they need to make that clear on the record. That the way it was envisioned, when drafted, was that the administrator of the review process didn't necessarily mean that it had to be a committee meeting. There might be some particular instances where travel would be indicated, but it would always be necessary.

Vote: On **SEN. BARTLETT'S** motion that **HB 580 BE AMENDED - AMENDMENT #HB058001.asf**, motion carried -9-0.

SEN. BARTLETT said she has a second amendment. She asked the Committee members to look at the bill on Page 1, starting on Line 23, subsection 3, is a piece of the existing statute, that they added last session. She was on the Conference Committee that dealt with this section of law, so she is particularly familiar with the content.

Motion: **SEN. BARTLETT** moved that **AMENDMENT #HB058002.asf**, to **HB 580 BE CONCURRED IN.**
EXHIBIT (phs58a05)

Discussion:

SEN. BARTLETT said essentially these amendments stop subsection 3, which is the existing process for the Department of Corrections. Like the detention centers this session, the Department of Corrections last session was concerned about offenders in their facilities filing against peoples' professional and occupational licenses. The current arrangement within the Department of Corrections and the review takes place within the Department. The proposed amendment would strike those provisions put in last session and add them to the procedure that **REP. SCHMIDT'S** bill establishes. This is an external review

panel of people who are not directly involved with the immediate situation that is under review, but have had some correctional experience in their particular practice via counseling or medical or dental, etc. She does this for a couple of reasons. Primarily it provides more believability and protection for the Department; as things stand they are the ones who pay the providers against whom offenders might be filing complaints. Then they are the ones to review whether there is any substance to those complaints. It is kind of a Caesarea's wife situation. It looks better and it is better for an external review panel not directly involved, to have that review function. The Department would prefer to leave things as they are. She has double checked that. **Rick Day** was back in town, and the head of their health and Services Division had talked to him about this. They prefer to leave things the way they are. She would have to think hard about the reasons they gave for that to be able to relay them to the Committee faithfully. She will work on that if there is other discussion about the impedance.

SEN. CHRISTIAENS said he supports the amendments for a couple of reasons. As they moved in the Department of Corrections to doing contracting with regional detention centers, which are generally county ran, what they are doing for them becomes essential what happens also for all of those contracted beds, including the CCA facility that will be coming on line later this fall. Had this been in place, there is at least one life that might not have been lost in the last 6 months that he is aware of. That occurred because of a perforated ulcer in Tennessee, that the State of Montana is going to pay big bucks for. When there was no oversight, and they went on the fact the contracting agent said this person is not in any serious condition, within 24 hours, he was dead. He thinks what is good for our jails and those contract facilities is certainly good for the Department of Corrections.

SEN. FRANKLIN said she has some concerns about this. On a policy level this is ultimately absolutely where they should go. She agrees with **SEN. BARTLETT**.

This sets up a first tier of review for inmate complaints. For this bill, it is particular directed to the County Detention Centers. The Department of Corrections set up a procedure 2 years ago but theirs is more of an internal review within the Department. The idea was that, a lot of inmates are psychopaths and they learn to work the system. One of the major kind of tools they have is the kite, which is the message that they send out for a request for service, or a request. They go to the health service. If their needs are not granted, more frequently than might be in the civilian population, this is turned in to a

complaint to a professional board for poor practice. The testimony they heard was there was a number of folks who came in, and had complaints against their license, licensed personnel. There needs to be a way to review those complaints, but not have them go directly to the Board, so that the Board has to gear up and do a full complaint process. This will be a first tier.

The Department of Commerce said they would be happy to do that, which is quite nice. The Division of Professional and Occupational Licensing sees the reason for it. They would be a first tier, and they agreed to accept with a Memorandum of Understanding with the County.

This bill was geared specifically for the County Detention Centers because there was no process. **SEN. BARTLETT'S** amendments take the Department of Corrections process, which is an internal process, and get rid of that. The Department of Commerce, Professional and Occupational Board, then assumes the responsibility for that first tier of review. She said, actually she thinks it is a great idea structurally. She said her fear, this is strictly a political dynamic fear, is that these folks in the County really need the protection of the professionals. They have no recourse right now, except for a full blown hearing. She is concerned in terms of the political dynamic of asking the Committee to make a leap to broader policy change, and whether or not that would reflect adversely on the passage of this bill. Right now they have some protections. They might move to this, 2 years from now. She had to be straight with the Committee, this is her only concern. It is not a conceptual concern. The other thing was in terms of the example **SEN. CHRISTIAENS** brought up. She doesn't know if this would have covered his instance. The board reviews take much longer. She doesn't think it would have covered it.

SEN. CHRISTIAENS said, but it might have saved the State of Montana millions of dollars.

SEN. FRANKLIN said it would have saved money in the long term.

SEN. CHRISTIAENS said to talk about **SEN. FRANKLIN'S** concern politically, if she thinks the Department has any creditably, he thinks she is wrong. If it helps, assured that it helps this Department, which it only will. He thinks it makes the bill stronger, and he thinks it gives the Department of Corrections a little bit of credibility that they are lacking right now.

SEN. FRANKLIN said the biggest weight would be, they would be assuming quite a bit of responsibility. They did say in the hearing that you would agree to take this on, so the best way to

counteract the Department of Correction is for the Committee to say they have clear assurance from POL (Department of Commerce, Professional and Occupational Licensing, that they can take this on. That would be the best ammunition. She needs to hear that from **Steve Meloy** again. Could they have his response for the record on the amendments, as far as their (Professional and Occupational Licensing Division) taking on the Department of Corrections.

{Tape : 2; Side : A; Approx. Time Counter : 1 - 27}

{Tape : 2; Side : B; Approx. Time Counter : 0}

Steve Meloy, Department of Commerce, Professional and Occupational Licensing Division, said, within the Department of Corrections, he would first have to know how that process works. To this date, he still doesn't know how it works. They would certainly incorporate it into the way they have envisioned the process to work for them.

SEN. BARTLETT said it would just go into that process.

SEN. FRANKLIN added, they would dismantle their process and it would go right to you.

Steve Meloy said they would utilize an Advisory Committee. What he said at the hearing before, he would have to create a Memorandum of Understanding in order to recoup any costs. They could do that. They have done that with other agencies. As far as **SEN. BARTLETT'S** other amendments, the administrative purposes, she is right on. That is a better definition. What they anticipate in their Memorandum of Understanding to cover is the travel, and any expenses incurred, when this voluntary panel wants to be reimbursed.

SEN. BARTLETT said she wanted to ask **Steve Meloy** one more question. When she was first contemplating this during the hearing, one of her big concerns was if his Division could handle an addition to the work load for this review panels that have been designed, in **HB 580**, if they were to add the Correctional Facilities under the supervision of the Department of Corrections. Is that a concern to him.

Steve Meloy answered, it is not. The figures that they gave to him, 15 prior to the language change last session, and since they have changed it, they only had 2 complaints that had to come before their process, whatever it was. He doesn't anticipate a lot of work, or lot of activity. There are not going to go anywhere so it has a tenancy to decrease the number of people

that might file complaints against professionals. His answer is he doesn't anticipate their not being able to handle this.

CHAIRMAN BISHOP reviews for **SEN. THOMAS** (re-joined meeting) that the Committee was discussing **HB 580**.

SEN. BARTLETT said if they were ready, she'd do a short close on the 2nd set of amendments. She talked with both the bill Sponsor and its prime mover, who is **Sharon Howard**, who testified. She is in charge of the Medical Services at the Great Falls Detention Center. Once they understood what she was trying to do, they are okay with the intent of the amendments. So their only concern is the one that **SEN. FRANKLIN** expressed, which is that it could jeopardize the passage of the bill. She has told them, it at any point it appears that the amendment in and of itself is jeopardizing the passage of the bill, that they will simply strip it out. She is not interested in jeopardizing the passage of the bill. She certainly thinks it improves the process that the Department of Corrections would use. It gives them a little bit more protection that they ought to be interested in having, and aren't for whatever reason. They just don't like any one reviewing anything goes on within the confines of their Department.

Vote: **SEN. BARTLETT'S** motion, that Amendments #HB058002.asf to HB 580 BE CONCURRED IN. The motion carried -9-1, with Sen.Franklin voting " no."

Motion/Vote: **SEN. FRANKLIN** moved that HB 580 BE CONCURRED IN AS AMENDED. Motion carried 10-0.

CHAIRMAN BISHOP said that **SEN. GRIMES** asked him to hold **HB 111**, until Wednesday, March 17, 1999. The Committee still has **HB 266** to work on. That is all they are going to have Wednesday, March 17, 1999.

{Tape : 3; Side : A; Approx. Time Counter : 1 - 9}

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT (phs58aad)